Case and Comment
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American Bar Association Topics

ONE of the best attended and most successful meetings in the history of the American Bar Association convened in San Francisco on August 9, last. The sessions were marked by a series of eloquent and impressive addresses. Many important questions were considered in conferences and presented in committee reports. The gathering was a notable one both in the personality of the men who there represented the legal profession of America, and in the high ideals and stirring sentiments enunciated. San Francisco's hospitality was lauded by all.

President's Address.

In the course of his address as President of the Association, Cordenio A. Severance declared the people of America should be taught that the Federal Constitution and laws, and the courts that interpret them, do not destroy but preserve their liberties.

He cited a proposed constitutional amendment to prevent courts declaring laws unconstitutional as a sample of an innovation that would take away liberties from the people by giving Congress unchecked power. "If the proposed constitutional amendment should be adopted, not only would Congress have unlimited right to deal with subjects that have always been looked upon as belonging to the states, and reserved for their exclusive cognizance, but it would wipe out the Bill of Rights and all the protection that it gives to the people."

President Severance sounded a note of warning against the agitators who assail the law and our

Constitution, and added: "The assailant of our free institutions must not go unanswered. The vast influence of the American Bar should be massed against this challenge to civilization. In copatriotic organizations we should operation and harmony with other inaugurate and carry on a nationwide movement to the end that the men and women of our generation and the youth of the coming generation be shown the value of that liberty under the law which our forefathers established."

There were distinguished guests from abroad. Extracts from the remarks of Rt. Hon. Lord Shaw of Dunfermline form the frontispiece of this issue of CASE AND COMMENT.

M. Henri Aubepin brought to the American Bar Association the greetings of their brethren of the Bar of Paris, and Dr. Rokuichiro Masujima, former president of the International Bar Association, a member of the Japanese Bar, and barrister at law of the Middle Temple, spoke for Japan.

Removal of Delays in the Administration of Justice.

The need of many reforms in Federal judicial procedure, to the end that the work of the Supreme Court as well as that of the circuit and district courts might be speeded up, was emphasized in the address of Chief Justice Taft. The chief point of his argument was, that if the Supreme Court is empowered to decide what cases are of sufficient public interest to warrant their consideration by the tribunal of last resort after they have been tried by a court of first instance and have been subjected to at least one appeal in the circuit court, the mass of litigation now smothering the docket of the Supreme Court would be cut in half, and the business of the nation would be accelerated.

"The failures of justice in this country," said Chief Justice Taft, "especially in the state courts, have been more largely due to the withholding of power from judges over proceedings before them than to any other cause, and yet judges have to bear the brunt of criticism which is so general as to the results of present court action."

Chief Justice Taft said that litigation had so increased with the increase of the general business of the country that even in fields always occupied by the Federal courts, the judicial force had proved inadequate. He remarked that additional burdens had followed the enactment of new statutes, particularly the Volstead Act.

Constitutional Limitation of Legislation.

Asserting that the Supreme Court "has stood as the guardian and protector of our form of government, the guaranty of the perpetuity of the Constitution, and,

above all, the great champion of the freedom and the liberty of the people," Vice President Coolidge, referring to the proposal to give Congress power to make valid by re-enactment a law declared unconstitutional by the Supreme Court, said: "Such a provision would make the Congress finally supreme. In the last resort its powers practically would be unlimited. This would be to do away with the great main principle of our written Constitution, which regards the people as sovereign, and the government as their agent, and would tend to make the legislative body sovereign and the people its subjects. It would, to an extent, substitute for the will of the people, definitely and permanently expressed in their written Constitution, the changing and uncertain will of the Congress. That would radically alter our form of government and take from it its chief guaranty of freedom."

Vice President Coolidge asserted that should the people desire to have Congress pass laws that conflicted with the Constitution, the way is open and plain to proceed by amending the Constitution.

Kansas Industrial Court.

"The motto of Kansas is, 'We'll try anything once,'" said Senator Fred Dumont Smith, as he plunged into his explanation of the Kansas idea that has resulted in the establishment of a special court for settlement of industrial disputes.

Senator Smith said:

"The vice of arbitration is that both parties to a controversy are admitted to the arbitral body. Hence the result is a diplomatic peace, imposed by the stronger party, while no attempt is really made to find out just where the line fence belongs,—to get to the meat of the evils that on either side have engendered the dispute.

"No controversy can ever be settled unless along the lines of justice. Now, in Kansas, we have endeavored to apply juridical processes to these controversies."

He declared that in Kansas, because of the operations of the Industrial Court, the effects of both the railroad strike and the coal strike have been minimized.

Increase of Crime.

The Committee on Law Enforcement, of which Judge William B. Swaney of Chattanooga, Tennessee, is chairman, reported:

"The criminal situation in the United States, so far as crimes of violence are concerned, is worse than that of any other civilized country. Here there is less respect for law. From all available sources of information, we estimate that there were more than 9,500 unlawful homicides last year in this country; that in 1920 there occurred not less than 9,000, and that in no year during the last ten did the number fall below 8,500.

'Burglaries have increased in

this country during the last ten years, 1,200 per cent.

"On the other hand, in crimes which indicate the dishonesty of the people, such as larceny, extortion, counterfeiting, forgery, fraud, and other crimes of swindling, a comparison of conditions demonstrates that the morals of this country are better than in any other large country.

"It is our united opinion that the means provided in the United States for coping with crimes and criminals are to-day neither adequate nor efficient."

A series of recommendations were submitted by the committee. One urged the prohibition of the manufacture and sale of pistols, and of cartridges or ammunition designed to be used in them, "save as such manufacture shall be necessary for governmental and official use under proper legal regulation and control."

Bureau of Citizenship.

The formal report of the Committee on the Promotion of American Ideals was read by Robert E. L. Saner, of Texas, and adopted by the convention. It said in part: "We have interpreted this resolution as laying upon us the duty to prepare a program under which the lawyers of the United States, co-operating with every patriotic society and organization, and with every true American man and woman, shall be urged to join in an earnest effort to stem the tide of radical, and often treasonable, attack on our Constitution, our laws, our courts, our lawmaking bodies, our executives and our flag, to arouse to action our dormant citizenship, to abolish ignorance and crush falsehood, and to bring truth into the hearts of our citizenship."

Uniform Laws.

The urgent need of co-operation of the various state legislatures in the enactment of uniform state laws was pointed out by the National Conference of Commissioners on Uniform State Laws. Uniformity of acts governing arbitration, judicial decisions, aviation, joint parental guardianship of children and protection of illegitimate children, marriage and marriage licenses, commerce, and declaratory judgments, are a few of the questions discussed by this body at its thirty-second annual conference. Eleven states in the Union thus far have adopted ten or more of the acts recommended by the conference.

Officers for the Ensuing Year.

Hon. John W. Davis of West Virginia, former Ambassador to Great Britain, was chosen president of the American Bar Association for the coming year. W. Thomas Kemp of Baltimore, Maryland, was re-elected secretary, and Frederick E. Wadhams of Albany, New York, was continued as treasurer.

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Entrapping Suspected Criminals

IN view of the well-known fact that criminals usually work in secrecy, and that some unlawful practices are encouraged and protected by a large class of citizens, it often becomes necessary to resort to various artifices in order to enforce the law and punish its violation. But there is a very clear distinction between inducing a person to do an unlawful act, and setting a trap to catch him in the execution of criminal designs of his own conception. It may therefore be stated as a general rule, in regard to offenses affecting particular individuals, that if the criminal design originated with the perpetrator of the act, he cannot escape conviction merely by reason of the fact that the person affected laid a trap or facilitated the execution of the scheme, or that his agents appeared to cooperate with the perpetrator in order that he might be detected in the act. One who knows of a crime contemplated against him may remain silent and permit matters to go on, for the purpose of apprehending the criminal, without being held to have assented to the act; for the consent which will relieve an act of its criminal character is something different from mere passive submission without any previous understanding with the criminal. The same rule applies to police officers. It is their duty to bring offenders to justice as well as to prevent crime, and they may permit a criminal to carry out his known designs in order to make a case against him, but they cannot procure a person to commit a crime and then obtain his conviction. 8 R. C. L. 128. "The fact that officers of the government incited, and by persuasion and representation lured," a person to commit an offense "in order to entrap, arrest, and prosecute him therefor, is and ought to be fatal to the prosecution," states the court in Butts v. United States, 273 Fed. 35, annotated in 18 A.L.R. 143, holding that one who has been in the habit of using morphine to alleviate the pain of a malady cannot be prosecuted for violation of the Drug Act, where, having never sold the drug, and having no intention of doing so, the government officials induced an acquaintance of his to persuade such person to secure morphine for him from a stranger, furnishing the money for the transaction, for the purpose of entrapping him into commission of the offense.

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Where the doing of a particular act is a crime regardless of the consent of anyone, the courts are agreed that if the criminal intent originates in the mind of the accused, and the criminal offense is completed, the fact that an opportunity is furnished, or that the accused is aided in the commission of the crime in order to secure the evidence necessary to prosecute him therefor, constitutes no defense. To the argument that the act is done at the instigation or solicitation of an agent of the government, the courts have responded that the purpose of the detective is not to solicit the commission of the offense, but to ascertain if the defendant is engaged in an unlawful business.

The great weight of authority supports the view that a person making an unlawful sale of liquor is not excused from criminality by the fact that the sale is induced for the sole purpose of prosecuting the seller. And in a prosecution for using the mails for the purpose of sending nonmailable matter, it is no defense that the mails were so used at the instance of an officer of the government, who acted for the purpose of detecting, and not procuring, the commission of the crime. Nor is it a defense to a prosecution for stealing or embezzling a letter containing money, that it was addressed to a fictitious person, and mailed for the purpose of detecting a suspected person.

In a prosecution for receiving stolen property it is a defense that the property was offered to the accused, with the consent of the owner, for the purpose of entrapment, for the receipt, to constitute such a crime, must be without the authority of the owner. But where the criminal intent originates with the accused, and he suggests or asks for a bribe, the fact that his request is acceded to for the sole purpose of obtaining the necessary evidence for his prosecution is no defense.

"There has been much discussion in the courts of this country and by the text-writers as to the relation of detectives to crime, and many of their methods have been severely denounced. A few exceptional cases can be found where, upon grounds of public policy, the courts have refused to sustain convictions because of the abhorrent methods adopted to lure the accused into crime. Upon the other hand, there are many cases wherein the courts, while in some instances condemning the methods employed by the detectives, have sustained the convictions, although the particular crime charged would not have been committed had it not been for the deceptions or subterfuges or the suppression of the truth resorted to by the detective." Com. v. Wasson, 42 Pa. Super. Ct. 38.

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Insurance on Intoxicating Liquors

AN insurer who collects and retains the premium on a burglary, larceny, and theft policy covering intoxicating liquor, and who manifests no desire, prior to a loss, to cancel the policy, cannot escape liability on the theory that, because of the "War-time Prohibition Act," the liquors had no value. This question arose in the case of Chicago Bonding & Ins. Co. v. Oliner, 139 Md. 408, 115 Atl. 592, annotated in 18 A.L.R. 1081, where the court held that the damages to be allowed for the loss by theft of whisky insured against theft after prohibition went into effect are the fair value of the whisky; in determining which, the cost of the liquor may be considered.

A property right which is insurable is generally recognized in intoxicating liquor, although it is capable of unlawful uses. The insurance attaches to the property only, and the risks insured against are not the consequences of illegal acts, but of accidents.

A contract of insurance of whisky stored in a bonded warehouse is not void on the ground that it tends to assist the insured to violate the public policy and laws of the state against the possession and sale of intoxicating liquors therein. Mechanics' Ins. Co. v. C. A. Hoover Distilling Co. 31 L.R.A.(N.S.) 873, 105 C. C. A. 128, 182 Fed. 590. The court remarked: "Even if these contracts of insurance had the effect to make the business of the manufacture and sale of liquor less hazardous, and in that way to encourage the conduct of that business, nevertheless that encouragement was not the chief purpose or direct effect, but was a mere incident of the indemnity against loss by fire which the policies were made to secure."

A contract of insurance upon intoxicating liquors, susceptible of legitimate use, is collateral to, and too remotely connected with, the illegal use to which such goods are put, to be affected by it, where no illegal design entered into the making of the contract at its inception. Erb v. German-American Ins. Co. 98 Iowa, 606, 67 N. W. 583, 40 L.R.A. 845.

But in some cases the contract of insurance covering liquors has been held so closely related to the unlawful act as to be a part of that transaction and therefore invalid; as where the policy expressly agrees that the property insured is to be kept and main-

tained in violation of law. Wood v. First Nat. F. Ins. Co. 21 Ga. App. 333, 94 S. E. 622. Or where the direct purpose of the insured in taking the policy on a stock of intoxicating liquors was that he might continue their sale with the greatest safety. Kelly v. Home Ins. Co. 97 Mass. 288. And a contract directly insuring liquors intended for illegal sale is invalid as one made to afford protection for illegal acts; and if an illegal traffic in intoxicating liquors is the principal business of a druggist insuring his stock of goods, and his other business is a mere cover for the purpose of enabling him to secrete and disguise his real business, the insurance is a contract to protect him in his illegal venture, and is therefore void. Carrigan v. Lycoming F. Ins. Co. 53 Vt. 418, 38 Am. Rep. 687.

The fact, however, that the insured had not obtained a license to sell liquor, has nothing to do with insurance on his stock of liquors and fixtures, and constitutes no defense to an action on the policy. Feibelman v. Manchester Fire Assur. Co. 108 Ala. 180, 19 So. 540, subsequent appeal in 118 Ala. 308, 23 So. 759.

It Helps. "In time of trial," said the preacher, "what brings us the greatest comfort?"

"An acquittal," responded a person who should never have been admitted. —Stanford Chaparral.

Branches Overhanging Boundary Lines

ENCROACHING branches extending over boundary lines are often a source of annoyance and injury, and constitute at least a technical nuisance. They may litter a well-kept lawn, destroy vegetation by overshadowing it, and shed leaves, which, wind-borne, settle on roofs and clog gutters and water pipes.

The right of an adjoining landowner to remove overhanging branches has been long recognized, and is based on his right to abate a nuisance. The recent case of Gostina v. Ryland, 116 Wash. 228, 199 Pac. 298, annotated in 18 A.L.R. 650, in conformity with the earlier decisions, holds that a property owner may, without notice, if he has not encouraged the maintenance of the nuisance, and after notice if he has, clip the branches of trees standing on adjoining property, which overhang his premises.

A landowner, however, cannot destroy or cut down an overhanging tree belonging to his neighbor, but has only the right to cut the overhanging branches back to the boundary line. He has the same right to remove encroaching roots of trees that he has to cut off the overhanging branches. But while he may cut off the overhanging branches of trees belonging to an adjacent landowner, he may not convert them to his own use.

There are a few decisions which recognize the right of a landowner, whose premises are invaded by the overhanging branches of a tree standing on the land of another, to maintain an action to compel the latter to remove the branches. In Brock v. Connecticut & Pass. R. Co. (1862) 35 Vt. 373, a suit was brought against a railroad to enjoin the planting of willow trees within a few feet of the line between the plaintiff's land and the railroad right of way. It was alleged that the soil for a considerable distance from the boundary line would be injured by the willows. The court held that relief was properly granted.

It has been repeatedly held that the owner of a tree the branches of which overhang the premises of an adjoining landowner is liable for damages caused by the overhanging branches.

The question of the ownership of a tree standing in close proxim-

ity to the boundary line has been frequently raised. The courts have determined that when the base of a tree is wholly on the land of one owner, the whole tree is his, without reference to its ramifications. "The weight of authority, reason, and analogy, as well as convenience," states the court in Skinner v. Wilder, 38 Vt. 115, 88 Am. Dec. 645, "is in favor of the principle that a tree and its product is the sole property of him on whose land it is situated; and that, considering the necessary and uncertainty of evidence as to the location and extent of the roots of a tree, its location and property should be determined by the position of the trunk or body of the tree above the soil, rather than by the roots within or branches above it."

The fruit of a tree overhanging a boundary line has been held, accordingly, to belong to the owner of the tree. He may maintain trespass against the adjoining owner if he converts such fruit to his own use. And if fruit on an overhanging tree falls to the ground in the neighboring close, the owner of the tree may enter to gather it.

Justice Clark's Retirement

Regret at Justice Clarke's resignation will be attended by appreciation of his good fortune in being able to carry out his philosophic scheme for his later years. On September 18 he will be sixty-five. His letter to President Harding describes a dream which many of us make and most of us never see realized even partially:

"For a long time I have promised what I think is my better self that at that age I would free myself as much as possible of imperative duties, to the end that I may have time to read many books that I have not had time to read in my busy life, to travel, and serve my neighbors and some public causes in ways in which I cannot serve them by holding public office."

In his service in the Supreme Court he has shown himself a sound and learned jurist, an able, impartial, and independent judge. He will take with him in his approaching retirement the esteem of his associates on the Bench, the respect of the Bar and of the country. George Sutherland, who is to be his successor, is eminently fit for the place. In his two terms as a Senator in Congress from Utah he won a very high reputation as a constitutional lawyer.—New York Times.

Shorthand Will is Valid

A will written in shorthand on a telegraph blank has been admitted to probate in solemn form, its validity upheld by the probate court of England. It was written by a commercial traveler, who adopted phonetic writing as the quickest means of expressing his wishes regarding the disposition of his large estate, when informed by the doctors that he had only a few hours to live.

The stenographic characters were so perfectly executed that they were readily translated by the official shorthand reporter of the court in which the will was offered for probate.—New York Times.

Liability of Husband for Sale of Liquor by Wife

THE law declares that the husband is the head of the family, and is entitled, as such, to regulate and control the household. But while it is willing to flatter his vanity to this extent, it does so that it may impose upon him a definite legal responsibility. Should a husband permit his wayward spouse to use the home for a purpose or a business prohibited by statute, he is criminally liable for her illegal acts. Thus, if a man suffers, without reasonable and practicable effort on his part to prevent it, the manufacture and sale on his premises, by his wife, of intoxicating liquor, contrary to the prohibitory laws, he is liable to punishment as though he had committed the act himself. This is held in the recent case of People v. Sybisloo, 216 Mich. 1, 184 N. W. 410, annotated in 19 A.L.R. 133.

It has long been settled that a husband is criminally responsible for the violation of a liquor law by his wife, when the illegal act is committed with his acquiescence or authorization. Where the illegal sale is made by the wife, in the presence and with the knowledge of the husband, it will be presumed, in the absence of evidence to the contrary, that she is acting under his control, as his agent or servant. Nor is the husband's liability affected by the fact that the premises on which the liquor is sold by the wife are a dwelling house owned or leased by her, since, as the domicil of the family, it is under his legal control.

A husband is not criminally liable for a violation of the liquor law consisting of an illegal sale made by his wife in his absence, and without his authority or consent; but the mere fact of his absence at the time of the unlawful sale does not necessarily exonerate him, since he may have authorized the act.

Nor do the statutes which give to a married woman the right to carry on any trade or business on her sole and separate account affect the husband's liability in case of the illegal sale of liquor by the wife. As said in State v. Rozum, 8 N. D. 548, 80 N. W. 477: "No rights that our statute gives to married women to contract or transact business in their individual names, or to own property, in

any manner affect the position of the husband as head of the family. All the rights, duties, and responsibilities of the position devolve upon him. He controls the family and the home. Nothing can be brought into or kept in the home residence against his will, nor can any person resort there if he oppose. Having this right and this power, he keeps and maintains the home; and if he knowingly suffer articles upon which rests the ban of the law, to be kept and sold in his home, and if he knowingly suffer persons to resort there for the purpose of drinking intoxicating beverages, contrary to law, then he, in law, assents that such things should be done in his home, and he is the person who keeps the place where the forbidden acts are done and the prohibited articles kept. He is, at least, a participator with his wife in the crime, and it is entirely immaterial in whose name the title to the property may stand."

Recent Important Cases

Auction — *validity of agreement not to bid.* An agreement between intending bidders at an auction sale not to bid against one another, but to share in the goods bid off by one of them, is not unenforceable as being against public policy, according to the decision of the English Court of Appeal in Rawlings v. General Trading Co. 10 B. R. C. 278, in which however, a contrary conclusion was reached by the lower court and by one of the members of the appellate court. The decisions on the question, reviewed in the accompanying annotation, are likewise in conflict.

Automobile — *collision — unlicensed driver — status.* The fact that the driver of an automobile has not obtained the license required by law is held in the Ontario case of Geoffrey v. Cooper, 10 B. R. C. 134, not to make him a trespasser upon the highway, so as to preclude him or his passenger from recovering damages from another whose failure to give him the right of way occasioned a collision. The right to recover for damages sustained while using an unlicensed motor vehicle, or one driven by an unlicensed operator, is considered in a note accompanying the case.

Automobile — *duty of one letting for hire — defective condition.* One who, for hire, lets an automobile to be operated upon the public highway, is held bound in the Rhode Island case of Collette y. Page, 114 Atl. 136, 18 A.L.R. 74, to use ordinary care to see that the steering gear is in reasonably safe condition to prevent injury to other persons lawfully using the highway.

Automobile — *negligence of passenger — failure to control movement of car.* A passenger on the back seat of an automobile is held not chargeable with negligence in the Wisconsin case of Brubaker v. Iowa County, 174 Wis. 574, 183 N. W. 690, in failing to see signals along the road, warning of danger, when there is no evidence that any existed which would warn an ordinarily prudent traveler, or in failing to control the speed of the car when there is nothing to show that he could have formed any intelligent estimate of the rate of speed.

The personal care required of one riding in an automobile driven by another as affecting his right to recover against a third person is treated in the note which follows this case in 18 A.L.R. 303.

Automobile — *liability for injury done by car in possession of repair man.* The owner of an automobile is held to be not liable in Whalen v. Sheehan, 237 Mass. 112, 129 N. E. 379, annotated in 18 A.L.R. 972, for injury done by it while a repair man in whose possession it has been placed for repairs, without any right on the part of the owner to exercise control or direction over the employment and its details, is "tuning" it up after the repairs are finished, and before it is returned to the owner.

Automobile — *negligence of guest — effect on recovery.* When dangers which are either reasonably manifest, or known to an invited guest, confront the driver of a vehicle, and the guest has an adequate and proper opportunity to control or influence the situation for safety, if he sits by without warning or protest and permits himself to be driven carelessly to his injury, this is held to be negligence which will bar recovery, in Minnich v. Easton Transit Co. 267 Pa. 200, 110 Atl. 273, 18 A.L.R. 296.

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Bonds — *deduction of income tax from interest payments — liability to holder.* The question of the liability of a corporation to a holder of bonds for the amount of income tax which it is required by law to deduct from interest payments is involved in the English case of Indian & G. Invest. Trust v. Borax Consolidated, 10 B. R. C. 108, in which it is held that a railway company incorporated and carrying on business in the United States, which has issued bonds secured by a deed of trust by which it was agreed that the interest and principal should be payable in London, and that such deed of trust and the rights of all parties claiming thereunder should be regulated by the law of England, is not entitled to deduct from interest payments the amount which under the Federal Income Tax Law it is required to withhold from interest payable by it to foreign corporations. This case and another English case noted in the annotation thereto appear to be the only decisions upon the point.

Bonds — *patrolman — liability to individual.* One unlawfully shot by a patrolman in an attempt to arrest him is held in Carr v. Knoxville, 144 Tenn. 483, 234 S. W. 328, to have no right of action upon the bond given by the patrolman to the city, conditioned that he will well and truly perform all such duties as may be required of him in his office, and well and truly serve the city.

The right of an individual to maintain an action on the bond of a peace officer is discussed in the note which follows this case in 19 A.L.R. 69.

Carriers — *negligence to passenger — liability to rescuer.* A railway company which negligently throws a passenger from a crowded car on a trestle is held liable for injury to a relative who, in going to his rescue, falls through the trestle, in Wagner v. International R. Co. 232 N. Y. 176, 133 N. E. 437, annotated in 19 A.L.R. 1, on liability for the death of, or injury to, one seeking to rescue another.

Commerce — *what is — coal mining — obstructions.* Coal mining is not interstate commerce, and the power of Congress is held in United Mine Workers v. Coronado Coal Co. U. S. Adv. Ops. 1921–22, p. 643, not to extend to its regulation as such; nor is obstruction to coal mining a direct obstruction of interstate commerce in coal, although it may affect it by reducing the amount of coal to be carried in that commerce.

Contempt — *abusing juror.* That abusing a juror for the verdict he has rendered, and making threatening gestures towards him after the case is ended, but before the end of the term of court, tends to impede and hinder the proceedings of the court, and to impair respect and authority for the court's proceedings, within the meaning of a statute making one guilty of an offense whose conduct has such tendency, is held in the North Carolina case of Re Fountain, 182 N. C. 49, 108 S. E. 342, which is annotated in 18 A.L.R. 208, on assault as contempt of court.

Contract — *for manufacture of chattels — substantial compliance.* Substantial compliance with plans and specifications is held sufficient in a contract for manufacture of tables and desks in Harrild v. Spokane School Dist. 112 Wash. 266, 192 Pac. 1, annotated in 19 A.L.R. 811, on substantial performance of a contract for the manufacture or sale of an article.

Contract — *partial performance as acceptance.* A partial and reasonably prompt shipment by the offeree of more than half of the quantity and quality of lumber purchased for delivery, and delivered to and accepted by the offerer, pursuant to the terms and conditions of the offer, is held to amount to an acceptance by the offeree in Wood & B. Co. v. D. E. Hewit Lumber Co. 89 W. Va. 254, 109 S. E.

242, annotated in 19 A.L.R. 467, on acting on an order for goods as an acceptance thereof.

Contract — *Statute of Frauds — joint adventure in purchase of real estate.* A contract for joint adventure in the purchase and sale of real estate and division of the profits is held in the Wyoming case of Hoge v. George, 27 Wyo. 423, 200 Pac. 96, not to be within a statute making void every agreement or contract for the sale of real estate which is not in writing, so as to defeat a suit for accounting of profits.

The applicability of the Statute of Frauds to a joint adventure or partnership to deal in real estate is considered in the note which follows this case in 18 A.L.R. 469.

Corporation — *visitatorial powers over foreign corporation.* Courts of one state are held in the Alabama case of Boyette v. Preston Motors Corp. 89 So. 746, to have no jurisdiction to exercise visitatorial powers or supervisory powers over the management of the internal affairs of a corporation organized under the laws of another state where it is domiciled.

Jurisdiction of an action or proceeding involving the internal affairs of a foreign corporation is treated in the note appended to this case in 18 A.L.R. 1376.

Covenant — *against apartment house — two-family flat.* A building divided into two apartments, one on the ground floor and one on the floor above, with a common entry in front and in the rear, is held to be within a covenant in a deed of the property, forbidding the construction of an apartment house thereon, in the Virginia case of Elterich v. Leicht Real Estate Co. 107 S. E. 735, annotated in 18 A.L.R. 441, on multiple residence structures as violations of restrictive covenants.

Covenant — *against keeping hotel — breach.* Violation of a restrictive covenant on the use of property as a hotel is held in Huntley v. Stanchfield,

168 Wis. 119, 169 N. W. 276, to result from keeping the building open to the public and letting rooms at a fixed rate to transients who register, and maintaining an office, lobby, and parlor, although no meals are served in the building, and apartments are let for long periods to regular lodgers.

The decisions on what constitutes a hotel or inn accompany this case in 19 A.L.R. 513.

Criminal law — *jurisdiction — person brought into country without extradition.* That one seized under a mistake as to identity by United States soldiers, in the country of his residence, and carried into the United States, not having been kidnapped, cannot be tried there for offenses committed within the United States other than that for which he was seized, until he has voluntarily submitted himself to the jurisdiction, or consent to his trial, by the country of his residence, has been secured, is held in Dominguez v. State, — Tex. Crim. Rep. —, 234 S. W. 79, which is accompanied in 18 A.L.R. 503, by a note on the right to try one brought within the jurisdiction illegally or as a result of a mistake as to identity.

Damages — *allowance for impaired purchasing power of dollar.* In allowing compensation for pecuniary losses through personal injury, it is held in the Vermont case of Halloran v. New England Teleph. & Teleg. Co. 115 Atl. 143, that the jury may take into consideration the impaired purchasing power of the dollar although there is no evidence in the case regarding the matter.

Supplemental annotation on increase in cost of living, or impaired purchasing power of money, as affecting damages for personal injuries or death, accompanies this decision in 18 A.L.R. 554.

Damages — *personal injury — deduction of allowance for lost time because of award from government.* The amount awarded one enlisted in the United States Navy for loss of time because of injury negligently inflicted upon him by a third person should not, it is held in the Wisconsin case of Cunnien v. Superior Iron Works Co. 184 N. W. 767, be deducted from the total amount awarded him as damages for the injury, although he continued for a time to draw his pay from the government and received an allowance for vocational rehabilitation under the Federal statutes.

The question of compensation from other sources as precluding or reducing a recovery against one responsible for personal injury or death is discussed in the note appended to the foregoing decision in 18 A.L.R. 667.

Divorce — *attempt to commit to asylum as cruel and abusive treatment.* Whether or not an unsuccessful attempt by a man to commit his wife to an insane asylum constitutes cruel and abusive treatment is held in the Maine case of Michels v.

Michels, 115 Atl. 161, to depend upon the motive from which he acted.

The subject of charge of insanity, or attempt to have spouse committed to an insane asylum as a ground for divorce, is treated in the note appended to this case in 18 A.L.R. 570.

Divorce — *survival of liability for alimony.* That death of the husband terminates the liability of his estate for alimony under a decree adopting a contract fixing the amount of alimony, which does not provide for its surviving the husband's death, is held in the Colorado case of Parsons v. Parsons, 70 Colo. 333, 201 Pac. 559, annotated in 18 A.L.R. 1038, on the death of the husband as affecting alimony.

Electricity — *duty to protect wires from tree limbs.* An electric company maintaining high-tension wires beside a highway is held in the Maryland case of Hagerstown & F. R. Co. v. State, 139 Md. 507, 115 Atl. 783, not to be relieved from the duty of protecting the wires against the decayed limb of a tree which overhangs them, by the fact that they are on its own property, and the tree is on private property of another, if the fall of the limb is likely to break the wires and endanger persons passing along the highway. The liability of one maintaining an electric wire over or near the highway, for an injury due to the breaking of the wire by the fall of a tree or limb, is treated in the note appended to this decision in 19 A.L.R. 797.

Foreign extradition — *name of crime.* The law of foreign extradition, it is held in Collins v. Loisel, U. S. Adv. Ops. 1921–22, p. 560, does not require that the name by which the crime is described in the two countries shall be the same, nor that the scope of the liability shall be coextensive or in other respects the same in both countries. It is enough

if the particular act charged is criminal in both jurisdictions.

Homicide — *killing bystander — malice.* In a homicide case where one shoots at another, and the bullet strikes a third person and kills him, the malice or intent is held in the New Mexico case of Carpio v. State, 199 Pac. 1012, to follow the bullet.

The subject of homicide by unlawful act aimed at another, is discussed in 18 A.L.R. 914.

Husband and wife — *liability of husband for necessaries — separate means of wife.* That a wife has means of her own is held not to prevent her pledging her husband's credit for necessaries with which he fails to supply her, in McFerren v. Goldsmith-Stern Co. 137 Md. 573, 113 Atl. 107, which is annotated in 18 A.L.R. 1125, on the duty of a husband to provide necessaries for his wife as affected by her possession of independent means.

Husband and wife — *wife's action for injury to husband.* A wife whose husband is mutilated by the negligence of another is held entitled in the North Carolina case of Hipp v. Du Pont de Nemours & Co. 182 N. C. 9, 108 S. E. 318, 18 A.L.R. 873, to recover from such other damages for injuries personal to herself from the accident, for which the husband could not have recovered, such as shock suffered by her when seeing his mutilated condition, and loss of consortium and support.

Incompetent person — *reasonable doubt as to sanity.* On an issue as to the sanity of a person under restraint of his liberty on the ground of insanity, reasonable doubt as to his mental condition is held to entitle him to liberation, in Schutte v. Schutte, 86 W. Va. 701, 104 S. E. 108, annotated in 19 A.L.R. 711, on showing as to mental condition which will entitle one restrained on the ground of insanity to release.

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Insurance — *blood poisoning — effect of wound.* Where the insured sustains an injury through violent, external, and accidental means, and blood poisoning sets in, finally resulting in death, it is held to be immaterial in the Nebraska case of Hornby v. State L. Ins. Co. 106 Neb. 575, 184 N. W. 84, whether the infection was introduced at the time of the accident, and through the instrument operating to cause the injury, if the infection enters before the wound has become so cured as to prevent exposure to infection, and if the infection comes about naturally, without any apparent human act to produce it. The subject of infection through a wound previously received is treated in the note which follows this case in 18 A.L.R. 106.

Insurance — *contract for beneficial interest — enforcement.* Performance by a beneficiary in a mutual benefit certificate of his agreement to pay the dues in consideration of a beneficial interest in the insurance is held to prevent a change of beneficiary without his consent, in Columbian Circle v. Mudra, 298 Ill. 599, 132 N. E. 213, which is followed in 18 A.L.R. 378, by a note on the right to change the beneficiary of a mutual benefit certificate as affected by the payment of premiums or other consideration moving from the original beneficiary.

Insurance — *theft of car — misuse by chauffeur.* The mere fact that a chauffeur who, after giving a purchaser of an automobile a lesson in driving it and being told to return with the car later in the day, drives the car away on an errand of his own, during which the car is wrecked and he is killed, is held not to establish his theft of the car, within the meaning of a policy insuring the owner against theft, in the Maryland case of Ledvinka v. Home Ins. Co. 139 Md. 434, 115 Atl. 596, which is accompanied in 19 A.L.R. 167 by a supplemental note on insurance against the theft of an automobile.

Internal revenue — *income tax — fees of executor.* That the office of executor of a single estate is not, although held by an attorney at law, a trade or business within the meaning of a statute imposing a tax on the income of a trade or business having no invested capital, is held in Lederer v. Cadwalader, 274 Fed. 753, annotated in 18 A.L.R. 411, on commissions as executor, administrator, guardian, etc., as income subject to income tax.

Labor organizations — *liability to suit — execution against strike funds.* Unincorporated labor unions, such as the United Mine Workers of America, having a membership exceeding 400,000, and its local unions, are held in United Mine Workers v. Coronado Coal Co. U. S. Adv. Ops. 1921-22, p. 643, to be suable in their own names in the Federal courts for their acts, and the funds accumulated by such unions to be expended in conducting strikes are subject to execu-

tion in suits for torts committed by such unions in strikes.

Landlord and tenant — *surrender — effect on liability for rent.* The surrender of leased premises by the tenant and their acceptance by the landlord during the term is held in the Utah case of Willis v. Kronendonk, 200 Pac. 1025, to release the tenant from liability for all rents not due and payable at the time of the surrender.

Surrender and acceptance of a term as affecting the right to recover rent or on an obligation given for rent is considered in the note which follows this case in 18 A.L.R. 947.

Levy — *on contents of safe deposit box.* That an execution may be levied on the contents of a safe deposit box is held in Trainer v. Saunders, 270 Pa. 451, 113 Atl. 681, annotated in 19 A.L.R. 861. The earlier cases upon this question are treated in the annotation in 11 A.L.R. 225.

License — *to use highway — duty of mail contractor to secure.* That one contracting to transport United States mail is not absolved from the duty of obtaining state licenses for motor trucks used in the business is held in the Washington case of State v. Wiles, 116 Wash. 387, 199 Pac. 749, which is accompanied in 18 A.L.R. 1163, by a note on the applicability of state or municipal traffic or vehicle regulations to those engaged in handling United States mail.

Monopolies — *organized baseball — not interstate commerce.* The organized business of giving exhibitions of baseball between clubs representing different cities, for the most part in different states, is held not to be interstate commerce within the meaning of the Anti-trust Acts of July 2, 1890, and October 15, 1914, in Federal Baseball Club v. National League, U. S. Adv. Ops. 1921–22, p. 588, although the scheme requires constantly repeated interstate traveling on the part of the clubs.

Mortgage — *waiver.* Receipt of an instalment of interest overdue on a mortgage is held to waive the right given by the contract to declare the whole debt due for such default, in the Virginia case of Fant v. Thomas, 108 S. E. 847, annotated in 19 A.L.R. 280.

Municipal corporations — *power to prohibit gasolene filling station.* That a municipal corporation cannot, under the general welfare provision of its charter, forbid the operation between designated points on its principal streets of a filling station for automobiles, to reach which cars must cross the sidewalk, is held in the Nebraska case of Standard Oil Co. v. Kearney, 106 Neb. 558, 184 N. W. 109, which is accompanied in 18 A.L.R. 95, by a note on public regulation of gasolene filling stations.

Negligence — *duty to foresee injury.* The owner of a lot adjoining the highway who permits ball playing thereon is held in the Massachusetts case of Harrington v. Border City Mfg. Co. 132 N. E. 721, not to be negligent towards a passer-by who is struck by a batted ball, if there is nothing to indicate that he should have foreseen or anticipated that such passer-by would, or might, be struck by a stray ball coming from the field.

The liability of an owner for injury to a person in the street in consequence of games or sports which he allows on his premises is considered in the note which accompanies this case in 18 A.L.R. 610.

Negligence — *of driver imputed to guest.* An invited guest in a private conveyance who has no control over the driver, is not engaged in a joint undertaking with him, is guilty of no negligence himself, and stands in no other relation to him requiring his negligence to be imputed to the guest, is held not to be chargeable with the driver's negligence so as to prevent his holding a stranger liable

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for an injury negligently inflicted upon him in Reiter v. Grober, 173 Wis. 493, 181 N. W. 739, annotated in 18 A.L.R. 362, on the liability of a guest for injury to a third person due primarily to the negligence of the driver.

Park — *lease for increasing knowledge of health devices.* Commissioners charged with the duty of maintaining a public park are held in Williams v. Gallatin, 229 N. Y. 248, 128 N. E. 121, 18 A.L.R. 1238, to have no authority to lease space in it for an exhibit designed to advance the knowledge of the people in methods of lessening the number of casualties and avoiding the causes of physical suffering and premature death.

The uses to which park property may be devoted is the subject of the annotation in 18 A.L.R. 1246.

Pleading — *foreign statute — effect.* It is not necessary in pleading a statute of a foreign state to set it forth in hæc verba. It is held sufficient if its terms are so pleaded that the court can determine its effect in the Minnesota case of Moe v. Shaffer, 184 N. W. 785, annotated in 18 A.L.R. 1194.

Public service corporation — *what is — sale of by-product.* A president of a corporation which undertakes to furnish surplus electric current generated by the corporation for use in its plant, to the owners of neighboring property, who string their own wires, and to the city for a few lights, is held not to be a public utility, subject to regulation by the public service commission, in State ex rel. Danciger v. Public Service Commission, 275 Mo. 483, P.U.R.1919A, 353, 205 S. W. 36, where the corporation has no charter authority or franchise to sell electricity.

The effect of rendering incidental service to members of the public to render an individual or corporation, whose principal business is of a different nature, a public utility, is the subject of the annotation following this case in 18 A.L.R. 754.

Sunday — *delivery of insurance policy on — effect.* The delivery on Sunday of an insurance policy which is not to take effect until delivery is held to render the policy a Sunday contract and unenforceable, notwithstanding it was dated on another day, in the Arkansas case of New York L. Ins. Co. v. Mason, 235 S. W. 422, 19 A.L.R. 618.

Trade commission — *jurisdiction — presents to employees.* The giving of social entertainment to employees to induce them to influence their employers to make purchases is held not so to affect the public as to come within the jurisdiction of the Federal Trade Commission, in New Jersey Asbestos Co. v. Federal Trade Commission, 264 Fed. 509. A note on the validity and construction of the statute creating the Federal Trade Commission is appended to this decision in 18 A.L.R. 546.

Trust — *conversion of property — tracing funds.* That owners of an interest in bonds pledged by a trustee as collateral for his own note cannot recover the amount from the insolvent estate of the trustee without tracing the proceeds of the note into possession of the representative of the estate, is held in the Tennessee case of McDowell v. McDowell, 144 Tenn. 452, 234 S. W. 319, annotated in 18 A.L.R. 623.

Vendor and purchaser — *misrepresentation as to price — rescission.* The High Court of Australia has held in Sibley v. Grosvenor, 10 B. R. C. 404, that an untrue statement made by the agent of a vendor of land that he is selling the land on behalf of mortgagees, and for that reason the price asked is lower than it would otherwise be, is such a material misrepresentation as to entitle one who has purchased the land in reliance thereon to rescind.

Will — *birth of child of bigamous marriage — effect.* Where one died leaving a last will and testament containing various bequests, and subsequently to the execution of the will a posthumous child was born to the testator, the child being the issue of a bigamous marriage, the testator having a living wife at the time of entering into the bigamous marriage, the birth of the child is held not to revoke the will, in the Georgia case of Irving v. Irving, 152 Ga. 174, 108 S. E. 540, annotated in 18 A.L.R. 88, on the illegitimacy of a child, as affecting the revocation of a will by the subsequent birth of a child.

Workmen's compensation — *accident — death from heart trouble.* Death resulting from an attack of heart trouble, caused by breathing dust-laden air in the place where an employee was at work, is held to be an accident within the meaning of the Workmen's Compensation Act, in Carroll v. Industrial Commission, 69 Colo. 473, 195 Pac. 1097, annotated in 19 A.L.R. 107.

Workmen's compensation — *injury arising out of employment — fall on sidewalk when getting supplies for lunch.* An injury from a fall upon the sidewalk of a public highway to an employee in a building, who had gone for supplies for the noonday lunch, in accordance with an agreement among certain of the employees to purchase such supplies, and prepare and eat them upon the premises of the employer, in preference to carrying cold lunches, is held not to arise out of his employment, within the meaning of the Workmen's Compensation Act, in Pearce v. Industrial Commission, 299 Ill. 161, 132 N. E. 440, which is followed in 18 A.L.R. 523, by a note on compensation for an injury to an employee while away from the plant, primarily to serve a purpose of his own or of another employee, but which may incidentally benefit the employer.

Workmen's compensation — *injury out of state — application of statute.* Where the provisions of a workmen's compensation act are optional the relation between master and servant is contractual, and, where the parties have accepted the provisions of the act, the right to compensation is held in the Michigan case of Crane v. Leonard, Crossetts & Riley, 214 Mich. 218, 183 N. W. 204, 20 N. C. C. A. 621, to exist in cases of injury out of the state as well as in those arising within its borders, and it is immaterial that the statute restricts the right to compensation to such as is provided by this act, and provides that the hearing shall be held at the locality where the injury occurred.

A supplemental note on the extraterritorial operation of workmen's compensation statutes is appended to this decision in 18 A.L.R. 285.

Workmen's compensation — *refusal to submit to operation.* The unreasonable refusal of an injured employee to permit a surgical operation where the danger to life from the operation would be very small, and the probabilities of a permanent cure very large, is held to justify a court in refusing compensation under the Workmen's Compensation Law from and after the trial, in Strong v. Sonken-Galamba Iron & M. Co. 109 Kan. 117, 198 Pac. 182, 18 A.L.R. 415.

A supplemental note on the duty of an injured employee to submit to an operation or to take other measures to restore earning capacity may be found in 18 A.L.R. 431.

Diplomacy. "It was a very shrewd and diplomatic culprit," says a Denver lawyer, "who was brought before a Judge in our town not long ago. The Judge fixed him with a stern eye and said:

"'You are charged with having registered illegally.'

"'Your Honor,' said the man, 'maybe I did, but they were trying so hard to beat Your Honor that I became desperate.'" —Denver News.

A. L. R. Annotations

The following subjects, in addition to those mentioned under Recent Important Cases, are among those exhaustively Annotated in 19 A.L.R.

Appeal and error — Power of legislature to require appellate court to review evidence. 19 A.L.R. 744.

Appropriations — Liability for work done or materials furnished, etc., for state or Federal governments in excess of appropriation. 19 A.L.R. 408.

Assignment — Agreement for contingent fee as assignment of interest in judgment. 19 A.L.R. 399.

Automobile — Liability of owner under "family-purpose" doctrine for injuries by automobile while being used by member of his family. 19 A.L.R. 387.

Bail and recognizance — Constitutional right to bail pending appeal from conviction. 19 A.L.R. 807.

Banks — Measure of damages for breach of duty by bank in respect to collection of commercial paper. 19 A.L.R. 555.

Bills and notes — Negotiability of instrument as affected by incompleteness of the attempt to fix due date. 19 A.L.R. 508.

Boarding house — What constitutes a boarding house. 19 A.L.R. 538.

Burglary — Conviction or acquittal of larceny as bar to prosecution for burglary. 19 A.L.R. 626.

Commerce — State statute in relation to inspection and grading of grain as unlawful burden on interstate commerce. 19 A.L.R. 164.

Corporations — Corporate stock without par value. 19 A.L.R. 131.

Corporations — Right of corporation to prefer creditors. 19 A.L.R. 320.

Copyright — Renewal of copyright where owner is dead. 19 A.L.R. 295.

Damages — Right to and measure of compensation to owner of fee when telegraph or telephone line is erected along railroad right of way or highway. 19 A.L.R. 383.

Elections — Validity, construction, and effect of Absentee Voters Law. 19 A.L.R. 308.

Embezzlement — Larceny or embezzlement as affected by purpose to take or retain property in payment of or as security for a claim. 19 A.L.R. 303.

False imprisonment — Malice and want of probable cause as elements of action for false imprisonment. 19 A.L.R. 671.

Fraud and deceit — Inference from circumstances of bad faith on part of persons receiving property from one who received it from an incompetent. 19 A.L.R. 67.

Innkeepers — Constitutionality of statute in relation to hotel rates or charges. 19 A.L.R. 641.

Insurance — Respective rights of insured and beneficiary in endowment, accumulation, and tontine policies. 19 A.L.R. 654.

Intoxicating liquor — Test of intoxicating character of liquor. 19 A.L.R. 512.

Judicial sale — Allowance of commissions or expenses when judicial sale or sale under power is vacated and resale ordered. 19 A.L.R. 178.

Landlord and tenant — Implied covenants of title or possession on assignment of lease. 19 A.L.R. 608.

Larceny — Pendency in one county of charge of larceny as bar to subsequent charge in another county of offense which involves both felonious breaking and felonious taking of same property. 19 A.L.R. 636.

Larceny — What amounts to asportation which will support charge of larceny. 19 A.L.R. 724.

License — Power to exact license fees or impose a penalty for benefit of private individual or corporation. 19 A.L.R. 205.

Marriage — As affecting jurisdiction of juvenile court over delinquent or dependent. 19 A.L.R. 616.

Marriage — Right of annulment of marriage induced by false claim that husband was cause of existing pregnancy. 19 A.L.R. 80.

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Master and servant — General discussion of the nature of the relationship of employer and independent contractor. 19 A.L.R. 226.

Mines — Duty of lessee under oil and gas lease to drill "protection" wells. 19 A.L.R. 437.

Officers — Applicability of motor vehicle regulations to public officials or employees. 19 A.L.R. 459.

Officers — Right of public officer to resign. 19 A.L.R. 39.

Public buildings — What are "public buildings." 19 A.L.R. 543.

Public service corporations — Federal control of public utilities. 19 A.L.R. 678.

Railroads — Right of grantor of railroad right of way or his privy to recover damages for interference with surface water by construction of road. 19 A.L.R. 487.

Records and recording laws — Constitutionality of provisions of Torrens Law as to prima facie effect of the examiner's reports. 19 A.L.R. 62.

Search and seizure — Federal Constitution as a limitation upon the powers of the states in respect of search and seizure. 19 A.L.R. 644.

Waters — Duty to refrain from improving or using one's property in anticipation of flooding of the property by another's wrong. 19 A.L.R. 423.

Workmen's compensation — Injury or death to which pre-existing physical condition of employee causes or contributes. 19 A.L.R. 95.

Workmen's compensation — Rights and remedies where employee was injured by third person's negligence. 19 A.L.R. 766.

Writ and process — Immunity of nonresident suitor or witness from service of process as affected by the nature or subject-matter of the action or proceeding in which the process issues. 19 A.L.R. 828.

New Book Announcements

"SURETYSHIP AND GUARANTY." By Edward Whiton Spencer. (W. H. Anderson Co., Cincinnati, Ohio.) Third Edition $6.00

"DEMOCRACY'S INTERNATIONAL LAW." By Jackson H. Ralston. (John Byrne & Co., Washington, D. C.) $1.50

"THE LAW OF PUBLIC CONTRACTS." By James F. Donnelly, Esq., of the New York Bar. (Little, Brown & Co., Boston, Mass.) Delivered $7.50

In considering contracts made with public officers and agents, many phases appear which are not present in ordinary contracts, and which seem not to have received full consideration and treatment by writers on the law of contracts generally.

Those who contract with municipal bodies must, at their peril, know the limitations upon their powers to make contracts. These limitations are not the same as in case of a private individual, and may render a contract invalid.

Our author, Mr. James F. Donnelly, an active practitioner in New York city, has represented many public contractors, and may well be classed as an expert in this important branch of the law.

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Our author, now of Washington, D. C., was formerly a practitioner in Chicago, where for several years he was counsel to the Italian Consulate. He is professor of international law in the law school of Northwestern University; a member of the Executive Council of the American Society of International Law; associate editor of the American Journal of International Law, and a practitioner in international law, with officers in Washington and Chicago. *This treatise is therefore the work of a practical lawyer who has also the training of a political scientist.* It embodies an attempt to reflect the known attitude of the United States on all matters of international law. It represents arduous work by the author over a period of more than fifteen years.

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Travels Out of the Record

A Poet to the Last. A will recently admitted to probate at Newark, New Jersey, reads like this:

"All my earthly goods I have in store
To my dear wife I leave forevermore.
I freely give—no limit do I fix.
This is my will, and she the executrix."

The Fate of an Amateur. "Flubdub has studied both law and medicine."

"How does he stand?"

"Figure it out for yourself. The lawyers call him 'Doc' and the doctors call him 'Judge.'"

—From the Kansas City Journal.

Simply Annihilated. A magistrate recently passing on a case made this decision:

"As to the claim for $34.50, it was for a partnership debt, the partners being the plaintiff and defendant, and as neither partner kept any books, and each disputes the other's word, emphatically, the debt was extinguished by confusion and hence rejected."

A Postponed Repentance. There was a man out in Wisconsin who went to a revival meeting and was pressed to repent. He wavered for a time and finally arose and said: "Friends, I want to repent and tell how bad I have been, but I dasn't do it when the grand jury is in session."

"The Lord will forgive," the revivalist shouted.

"Probably he will," answered the sinner, "but he ain't on that grand jury." —Boston Transcript.

An Ingenious Sidestep. An Italian woman asked in court to state her age, replied, "Between thirty-five and fifty." When pressed to be more explicit she said that she kept exact count of her money and other possessions because someone might rob her of these. "But as no one can steal a year or a day, I do not bother to keep track of them." —Boston Transcript.

A Short Story. Came before Magistrate Short in Fifth avenue court, Brooklyn, recently, Sam Short, tailor, charged with permitting his dog to go about unmuzzled.

"Does Sam Short wish Judge Short to fine him $2 and make Sam Short's purse short?" inquired the magistrate.

Sam Short replied shortly that he did not wish so, and that he was short already, financially speaking. His alleged unmuzzled dog was a small, short dog and was not worthy long court consideration, he said, by Magistrate Short.

"Keep your short dog muzzled, Short," said the magistrate. "Sentence is suspended. I can't say it shorter than that."

—N. Y. Evening Post.

She Could Use Him. "Rastus," said the judge sternly, "you're plain no-account and shiftless, and for this fight I'm going to send you away for a year at hard labor."

"Please, jedge," interrupted Mrs. Rastus from the rear of the court room, "will yo' Honah jes' kinder split dat sentence? Don't send him away from home, but let dat hard labor stand."

—The American Legion Weekly.

Honest Milkman. The dealer was charged with selling adulterated milk and he pleaded not guilty.

"But," said the judge, "the testimony shows that your milk contained 25 per cent water."

"Then it must be high-grade milk," returned the dealer. "If your Honor will look up the word 'milk' in your dictionary you will find that it contains 80 to 90 per cent water. I should have sold mine for cream."

—Boston Transcript.

Who's Loony Now? It was in a court of law, and a witness was being cross-examined.

Said Counsel—Why do you assert that the plaintiff is insane?

Witness—Because he goes about declaring he is the prophet Mohammed.

Counsel—And do you consider that clear proof of his insanity?

Witness—I do.

Counsel—Why?

"Because," answered the witness, with a complacent smile, "I am the prophet Mohammed myself."

—Edinburgh Scotsman.

A Tedious Job. "What makes you so late with the milk these mornings?" asked Mrs. Bolton.

"Well, you see, ma'am," answered the milkman, "the law doesn't allow us any more than 25,000 bacteria to the gallon, an' you wouldn't believe how long it takes to count the little varmints!" —Edinburgh Scotsman.

And That's That. On Eighteenth street yesterday. Two negroes driving motors. One driving truck thrusts out his arm for a turn. Other driver, coming from behind, sounds horn and attempts to pass. Both cars stop. Fenders touching, both drivers pile out to argue.

"Didn't you see my arm?" asks the truck driver.

"Didn't you hear my horn?" counters the other.

"Sure I heard your horn."

"Why didn't you stop, then?"

"'Cause, ain't my arm as good as your horn?"

Drivers get back in and both machines proceed. —Kansas City Star.

Proof Positive. A woman litigant who had employed and discharged several lawyers to prosecute her suit before trial, and then discharged the one who had conducted the trial, went to another after a directed verdict was rendered against her and proceeded to berate her last attorney for his supposed inefficiency and then began a tirade of abuse against the trial judge. "Why," she says, "I always knew that Judge Blank was against me from the very start, and yesterday from his own lips I heard him say so. He said he dismisses my case with prejudice."

Foreseeing. "Well," said the lawyer, "what shall we ask for—trial by judge or by jury?"

"Take the judge, Doc," said the plumber client. "I've done plumbing work for nearly everybody in this town and a jury would be twelve times as prejudiced as a judge."

—Richmond Times-Dispatch.

A Small Point. His wife—So your client was acquitted of murder. On what grounds?

Lawyer—Insanity. We proved that his father had spent five years in an asylum.

His wife—But he didn't, did he?

Lawyer—Yes. He was a doctor there, but we had not time to bring that fact out. —Boston Transcript.

A Holdup. When a distributor of advertising leaflets tries to give them away on the street, the average New Yorker brushes by uninterested. People don't value printed matter which is forced on them. But one evening a "healer" with a skeleton and an American flag, mounted a truck near Union Square and shouted:

"Now, friends, the law says I mustn't give these pamphlets away! I don't want to get pinched, and so I'm not going to give them away! But the law doesn't say that you can't come and take 'em away from me!"

He held out a bale of leaflets and his listeners fell all over each other rushing to snatch them from his hands. —New York Evening Post.

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